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No. 97-2012

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

DOUG RANKIN and VICTORIA RANKIN,
Petitioners,
v.
MARK EVANS, RICHARD WILLE,
SHERIFF OF PALM BEACH COUNTY,
PALM BEACH COUNTY SHERIFF'S DEPARTMENT,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether technical noncompliance with Fed. R. Civ. Pro. 50(a)(2) may be excused in situations where the purpose of the Rule is satisfied and the trial judge and opposing counsel have actual notice of the basis for the motion for judgment as a matter of law.

II. Whether petitioners' Seventh Amendment rights were violated where they had no viable causes of action triable by a jury and the trial judge should have entered summary final judgment against them prior to trial because there was probable cause for the arrest.

LIST OF PARTIES

The following listed persons are parties to this case:

Mark Evans
Doug Rankin
Victoria Rankin
Richard Wille * as Sheriff of Palm Beach County

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* Sheriff Wille's name is misspelled in the caption of the Eleventh Circuit's opinion and is misspelled in the petition for a writ of certiorari. His name was spelled correctly throughout the record before the trial court.

The petitioners list the Palm Beach County Sheriff's Department as a party to this case. It is **not**. Richard Wille, as Sheriff of Palm Beach County, was substituted as the defendant in Count II.

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RESPONDENTS' BRIEF IN OPPOSITION

OPINIONS BELOW

The petitioners' statement regarding the opinions below is basically correct. In addition, the following should be noted. The case was tried before the Honorable Jose A. Gonzalez in the Southern District of Florida. The Honorable Stanley S. Harris, Senior Judge for the District of Columbia, sitting by designation, wrote the opinion of the United States Court of Appeals for the Eleventh Circuit. The Honorable Rosemary Barkett, Circuit Judge, and the Honorable Phyllis Kravitch, Senior Circuit Judge, concurred in the unanimous decision below.

STATEMENT OF JURISDICTION

The petitioners' statement of jurisdiction is basically correct. It should be noted that the opinion and judgment

of the United States Court of Appeals for the Eleventh Circuit were entered on January 29, 1998, and the petitioners filed their motion for rehearing in the United States Court of Appeals for the Eleventh Circuit on February 19, 1998.

STATEMENT OF THE CASE

This is a petition for a writ of certiorari to review a decision of the United States Court of Appeals for the Eleventh Circuit that affirmed an order of the trial judge that granted the motion of defendants, Mark Evans and Richard Wille, as sheriff of Palm Beach County, for a judgment notwithstanding the verdict and entered judgment as a matter of law in favor of the defendants and against the plaintiffs, Doug Rankin and Victoria Rankin.

This lawsuit arose out of the November 22, 1988, arrest of Doug Rankin by the Palm Beach County Sheriff's Office for sexual abuse of a child under the age of twelve. The child he allegedly abused, Amber Brake, was three years old at the time of the incident. The facts concerning the assault, the sheriff's investigation and subsequent arrest of Doug Rankin for the assault, are set forth at length in the opinion of the Eleventh Circuit.

The respondents incorporate by reference and rely on the facts in the opinion below. For clarity, the respondents have set forth only a short factual synopsis in this brief. In addition, the respondents in this brief in opposition have set forth a number of glaring omissions and inaccurate statements made by the petitioners regarding the record.

The record below reflects that Amber was sexually abused and that the young toddler told her mother, a clinical psychologist, that her "bottom was broken, that Ba Ba Blue had used his finger and made a hole in it, it was broken." (R.8-463) The child's pediatrician, Dr. Drummond, examined her on the night that the child's mother learned of the assault. Dr. Drummond questioned

Amber and asked her if anyone did anything to her, to which the child responded "yes." (R.6-77) He asked "who?" and Amber replied "Ba Ba Blue". (R.6-77) He asked "how?" and Amber replied "he pinched my bottom" and "he used his finger to make a hole." (R.6-77) When Dr. Drummond asked her "when?" Amber responded with a shrug. In response to questions of "today?" and "yesterday?" the child answered "yes." (R.6-77; plaintiffs' exhibit 12) Dr. Drummond performed a physical examination of Amber's genital area and found an area of abrasion and a notch in the child's hymen that was consistent with child sexual abuse. (R.6-78) The notch was actually a physical tear. (R.6-91)

After Dr. Drummond finished his examination of Amber, he got very quiet and seemed disturbed. (R.8-470) According to Dr. Brake, the child's mother, the pediatrician told her that there were lacerations and abrasions of Amber's genital area that were consistent with digital penetration. (R.8-470) Dr. Drummond told the mother "Let's get this guy off the street" and informed her that he would call HRS the following morning. Dr. Brake responded that she would call the Sheriff's office. (R.8-471) Dr. Drummond testified at trial that if the mother had not contacted the authorities, he would have, because it was his obligation to do so. (R.6-93)

On the following morning, November 22, 1988, Dr. Brake called the Palm Beach County Sheriff's Department at 9:06 a.m. and left a message "has proof her three year old has been molested." (plaintiffs' exhibit 1) The case was assigned to Deputy Mark Evans for investigation. His first involvement with this matter was when he was given the telephone message slip and asked to call Dr. Brake. (R.6-36) He contacted her, scheduled an interview with her and the child and arranged to have an HRS representative present at the interview. (R.6-37) According to Deputy Evans, the first thing done in a case of child sexual abuse is an interview of the child. (R.6-37)

On November 22, Dr. Brake met with Deputy Evans, gave him a tape of her daughter's recitation of what had occurred, and told Deputy Evans exactly what transpired at Dr. Drummond's office on the preceding night. (R.8-470) Dr. Brake informed Deputy Evans that her daughter, Amber, had identified Doug Rankin to her as "Ba Ba Blue" on several occasions. (R.8-472) A teacher at the school informed Dr. Brake that the children called Doug Rankin "Ba Ba Blue". Dr. Brake advised Deputy Evans that Amber did not call anyone else "Ba Ba Blue" and that Amber never identified another human being by that name. (R.8-472)

Dr. Brake made it clear to Deputy Evans that she wanted to prosecute Doug Rankin and that she was willing to testify against him under oath. There was absolutely no doubt in her mind at that point as to who had abused her child. (R.8-483) Dr. Brake considered her child to be a victim of crime. She believed that her child had been sexually molested and that Amber had been the victim of digital vaginal penetration by Doug Rankin. (R.8-484) She was convinced that she relayed everything she knew about this incident to Deputy Evans and the authorities. She asked Deputy Evans what steps would be necessary in order to have Rankin charged and prosecuted.

On the morning of November 23, Deputy Evans went to the Sugar Plum School to arrest Doug Rankin. The determination Deputy Evans had to make as a police officer before he could arrest Rankin was that there was probable cause for the arrest. (R.7-157) Based on all of the information that he had in November 1988—a recorded self-initiated statement from a child, medical evidence from a physician, the mother's statement that there had been a change in the child's behavior since enrollment in the school, a statement from another clinical psychologist who noted the change, and no convincing evidence that Rankin could not have had access to the child—Deputy Evans determined there was probable cause

to arrest Rankin. (R.7-157) Based on this evidence, Deputy Evans arrested him.

The grand jury did not return an indictment against Doug Rankin. Subsequently, Doug Rankin and his wife, Victoria Rankin, instituted this action asserting a federal claim pursuant to 42 U.S.C. § 1983 for violation of Doug Rankin's constitutional rights and a state claim for false arrest. The action was filed in the Southern District of Florida against Deputy Sheriff Mark Evans, Richard P. Wille, as Sheriff of Palm Beach County, and Palm Beach County Sheriff's Department. (R.1-1-1 through 5)

The defendants answered the complaint, denied the material allegations and asserted various affirmative defenses, including a defense that probable cause existed for the arrest of Doug Rankin. (R.1-13-1 through 4) The defendants moved for summary judgment. (R.1-58-1 *et seq.*) One basis for the motion for summary judgment on both the civil rights claim and the state claim for false arrest was that Deputy Evans had probable cause to arrest Doug Rankin.

In response to the defendants' motion for summary judgment, the plaintiffs asserted "The primary issue in this case is whether the warrantless arrest of Doug Rankin was proper." The plaintiffs argued that the arrest was without probable cause. (R.3-87-21; 24) Following issue of the magistrate's report and recommendations regarding disposition of defendants' motion for summary judgment, the plaintiffs filed a response, stating: "The magistrate is correct that under the circumstances of this case, probable cause cannot be found as a matter of law. *This is the dispositive issue under both Court* [sic] *I and Count II of the Complaint.*" [emphasis supplied] (R.4-122-4) The trial court denied the motion for summary judgment on the main claim, but granted the motion insofar as it asserted a claim against the Sheriff's Department in Count I. (R.4-138-1 *et seq.*)

The plaintiffs have not been forthcoming about the state of the record below and have failed to inform this court of many facts relevant to disposition of this petition for a writ of certiorari. These omissions by the plaintiffs are tantamount to misstatements of fact. For instance, the plaintiffs fail to advise this court that all parties and the trial judge knew before this trial even began that the existence of probable cause was the central issue in this case. In the pretrial stipulation the parties stated:

> 7. Statement of issues to be litigated.
>
> (a) Whether Mark Evans had probable cause to arrest Doug Rankin for sexual battery. (Plaintiff has the burden of showing no probable cause on the civil rights claim and the defendant Palm Beach County Sheriff's Department has the burden of establishing probable cause on the false arrest claim.) Defendants contend that they are entitled to summary judgment as a matter of law on this issue. (R.3-99-4)

In the pretrial stipulation the parties also specified:

> 9. Issues of law.
>
> (a) Whether Mark Evans had probable cause to arrest Doug Rankin for sexual battery. Plaintiffs contend that this is an issue of fact under the circumstances of this case. *Defendants contend they are entitled to judgment as a matter of law on this issue.* [emphasis supplied] (R.3-99-5)

The case was tried by a jury in Fort Lauderdale, Florida before the Honorable Jose A. Gonzalez, Jr. commencing December 15, 1994. At trial the defendants moved for a directed verdict. (R.88-460 through 462; 8-502) The day before defendants moved for a directed verdict (and four days after trial had begun), defense counsel supplied plaintiffs' counsel and the trial judge with a trial memorandum that specifically briefed the issue of probable cause for the arrest. (R.5-177-5 *et seq.*) The grounds for the defendants' motion for directed

verdict or judgment as a matter of law, which were set forth in the defendants' trial brief, were that Deputy Evans had probable cause to arrest Doug Rankin and that mere negligence is not actionable on a claim brought pursuant to 42 U.S.C. § 1983. The trial judge did not allow argument by any party on the motion for directed verdict and summarily denied the motion. The entire colloquy pertaining to the motion is as follows:

> The Court: Let me see the presentment. Okay. Are there any motions to be made at the conclusion of the Plaintiffs' case?
>
> Mr. Barry: Yes, Your Honor. The Defendants, Mark Evans and Richard P. Wille will move for a directed verdict.
>
> The Court: All right. The Court has considered the evidence and the testimony offered, and has specifically considered the Defendant's trial memorandum and all the cases cited in support of that memorandum.
>
> And specifically has considered the case of Carol LeGrande versus Charles S. Dean (phonetic), which is found at 564 S. 2d 510, and the motion for a directed verdict will be denied. (R.8-460)

The defendants, relying extensively on *LeGrand v. Dean*, 564 So. 2d 510 (Fla. 5th DCA 1990), *rev. den* 576 So. 2d 288, had argued in their trial brief that Evans had probable cause to arrest Rankin and that what circumstances constitute probable cause is a legal question. (R.5-177-1 *et seq.*) Judge Gonzalez was very familiar with the *LeGrand* case and the fact that it presented the same legal issues as this case.

LeGrand v. Dean involved facts substantially similar to those in this case. In that *en banc* decision, the court affirmed a summary judgment entered in favor of the sheriff, holding that the deputy sheriff had probable cause to arrest the plaintiffs for sexual battery of a child under the age of twelve. That case involved a sexual battery on an eleven and a half year old female victim that

occurred when she spent the night at the plaintiffs' house with their daughter. While the child was sleeping, the LeGrands allegedly took turns digitally penetrating her. The child did not say anything about the incident for several weeks, at which point she told a friend about the incident. With her friend's encouragement, the victim and her parents reported the alleged assault to the Sheriff's Department six weeks after it occurred.

A sheriff's deputy contacted the University of Florida child protection team and arranged for a videotaped interview of the victim. The deputy sheriff viewed the entire interview as the child described the sexual assault and interviewed the victim's parents. Thereafter, the deputy sheriff arrested the LeGrands for sexual battery upon a child under the age of twelve. No medical examination was performed. The deputy sheriff did not question the other children present in the same room and in the same bed at the time of the assault, nor did he question the LeGrands. The deputy sheriff did not question the friend to whom the disclosure was made. The deputy sheriff relied on the opinion of the child protection expert that the child was telling the truth. Based on these facts, the trial court entered a summary judgment for defendants. The appellate court affirmed, finding there was probable cause for the arrest. The majority reasoned that since the child's testimony alone would have been sufficient to support a conviction, if believed by the jury, *ipso facto,* it must equal probable cause.

Relying on the *LeGrand* case, the trial judge denied Deputy Evans' and Sheriff Wille's motion for directed verdict. At the conclusion of all the evidence, the defendants renewed their motion for directed verdict. (R. 8-502) Again the trial judge allowed no argument by counsel and denied the motion. (R.8-502) The entire colloquy pertaining to the motion is as follows:

> The Court: All right. Motions at the close of all the evidence on behalf of any party.

> Mr. Barry: Defendant Mark Evans and Richard B. [sic] Wille would renew its motion for a directed verdict.
>
> The Court: All right. The Defendants' renewed motion for a directed verdict, made at the close of all the evidence, will be denied on the basis previously announced at the close of the Plaintiffs' case in chief.
>
> Okay. We're going to go to the charge conference. (R. 8-502)

The court submitted the false arrest and violation of civil rights claims to the jury. The jury returned a special interrogatory verdict finding for the plaintiffs on the civil rights and false arrest claims. The jury awarded Doug Rankin one million dollars as damages for intangible damages, damage to personal reputation, and loss of past income and earning capacity resulting from the arrest. (R.5-174-1 through 3) The jury awarded Victoria Rankin $500,000 as damages for loss of consortium arising from Rankin's arrest. The jury awarded the plaintiffs $500,000 as business damages.

The trial court entered final judgments in favor of the plaintiffs, and against the defendants. (R. 5-180-1; 5-181-1; 5-182-1) The defendants on January 4, 1995, filed a timely renewed motion for judgment notwithstanding the verdict, a timely motion for remittitur, a timely motion to alter or amend the judgment and an alternate motion for a new trial. (R.5-185-1 *et seq.*; 5-186-1 *et seq.*; 5-188-1 *et seq.*) Defendants did not file supporting memoranda. Defense counsel wished to review the transcript before filing those memoranda. Consequently, defendants filed a motion to enlarge the time to file addenda to the post-trial motions and to file supporting memoranda. (R.5-187-1 *et seq.*)

The trial court granted the request for an extension of time for the defendants to make additions to their post-trial motions and to file their memoranda. (R.5-190-1)

The court later vacated the order granting an extension to make additions to defendants' post-trial motions and memoranda. (R.5-196-1) However, after defendants filed their post-trial motions and "reply" memoranda to the plaintiffs' memoranda, the trial court clarified its ruling on the motion to enlarge time and specified that it intended to grant an extension of time for the defendants to file addenda to their original post-trial motions. (R.5-202-1) The court treated the defendants' "replies" as addenda and memoranda in support of the defendants' original post-trial motions. (R.5-200-1; 5-201-1) The defendants' reply on their motion for judgment notwithstanding the verdict, as well as their post-trial motion for judgment notwithstanding the verdict, clearly raised probable cause for the arrest as grounds for the motion. (R. 5-201-1 *et seq.*)

The court conditionally denied the defendants' motion for new trial, and denied as moot defendants' motion for remittitur, motion for judgment notwithstanding the verdict on the loss of consortium claims, and motion to alter or amend the judgment. The court entered judgment as a matter of law in favor of the defendants on the civil rights and false arrest claims. (R. 5-207-1 *et seq.*)

The plaintiffs filed a notice of appeal seeking review of the order granting the motion for judgment notwithstanding the verdict. (R. 5-208-1 *et seq.*) The defendants filed a notice of cross-appeal seeking review of the portions of the appealed order that conditionally denied their motion for new trial and denied their other post-trial motions as moot. (R.5-209-1 *et seq.*) The Eleventh Circuit, in a unanimous decision authored by Judge Harris, affirmed the decision of Judge Gonzalez. The appellate court held that the grant of a judgment notwithstanding the verdict for defendants was not procedurally barred. The appellate court held that where all parties and the

trial judge are aware of the specific grounds for the motion, strict enforcement of the specificity requirement of Fed. R. Civ. Pro. 50(a)(2) is unnecessary to serve the purpose of the rule.

SUMMARY OF THE ARGUMENT

This Court should deny the petition for a writ of certiorari. This is a fact bound case. The decision below turns on the specific facts of this case. Moreover, there is no confusion or conflict in decisions among the federal circuit courts about the specifics required to satisfy Fed. R. Civ. P. 50. In short, there is no reason for this court to exercise its discretionary jurisdiction.

The defendants were entitled to judgment as a matter of law on the claims for violation of Doug Rankin's civil rights and for false arrest. Defendants' motion was timely and adequate to apprise the trial judge and plaintiffs' counsel of the basis for the motion. The trial judge and plaintiffs' counsel knew exactly what the grounds were for defendants' motion. Furthermore, the plaintiffs waived any technical objection they had to the oral motions and post-trial motion because they failed to object at trial to any deficiency in the motion. The evidence, which is set forth in the opinion of the United States Court of Appeals for the Eleventh Circuit, shows that Deputy Evans had probable cause to arrest Doug Rankin.

REASONS WHY THE PETITION SHOULD BE DENIED

I. WHETHER TECHNICAL NONCOMPLIANCE WITH FED. R. CIV. PRO. 50(a)(2) MAY BE EXCUSED IN SITUATIONS WHERE THE PURPOSE OF THE RULE IS SATISFIED AND THE TRIAL JUDGE AND OPPOSING COUNSEL HAVE ACTUAL NOTICE OF THE BASIS FOR THE MOTION FOR JUDGMENT AS A MATTER OF LAW.

Both the plaintiffs and the trial judge knew before this trial ever began that the existence of probable cause was

the central issue in this case. The parties repeatedly stated this in the motion for summary judgment and response thereto, in plaintiffs' response to the magistrate's recommendations on the motion for summary judgment, and in the pretrial stipulation. Now, the plaintiffs disingenuously suggest that because the defendants did not orally articulate the exact basis of their motion during the trial, the trial judge could not grant a motion for judgment as a matter of law. The United States Court of Appeals for the Eleventh Circuit rejected this technical argument, as should this Court. The decision of the Eleventh Circuit is not in conflict with other appellate decisions, nor is there any confusion among the federal circuit courts regarding the specificity required for a motion under Fed. R. Civ. Pro. 50(a)(2). The case law amply supports the appellate court's decision.

The most significant reason why this Court should decline certiorari is because this is a fact bound case. The decision below turns upon its own facts and will affect few other than these litigants.

The day before defendants moved for a directed verdict they supplied plaintiffs' counsel and the trial judge with a trial memorandum that specifically briefed what all parties recognized as the central issue in this case—probable cause for the arrest. (R.5-177-5 *et seq.*) Before defendants could even make an argument on their motion made at the conclusion of the plaintiffs' case, the trial judge cut off argument and summarily ruled, stating that he had specifically considered the defendants' trial memorandum and all of the cases cited therein and that the court had specifically considered the decision in *LeGrand v. Dean, supra,* which is discussed at pages 7-8 of this brief. When the defendants renewed their motion at the conclusion of all the evidence, once again the court did not permit argument by any of the parties and denied the motion "on the basis previously announced at the close of the Plaintiffs' case in chief." (R.8-502)

The plaintiffs never raised any objection, either during the trial or in their post-trial memoranda, that the defendants' motion was technically deficient because it failed to set forth the grounds for the motion. (R.8-460; 502; R.5-195-1; R.5-203-1) The plaintiffs' failure to object at trial to the technical deficiency in defendants' motion precludes them from complaining on appeal about the lack of specificity of the motion. In *Cox v. City of Freeman, Missouri,* 321 F.2d 887 (8th Cir. 1963), the court specifically rejected plaintiffs' contention that the defendants had failed to state the specific grounds of their motion for a directed verdict as required by Fed. R. Civ. Pro. 50(a). The court noted that it would be an unfair and dilatory practice to allow a plaintiff to raise this issue at the appellate level after remaining silent when the trial judge makes his decision. Likewise, in *Quint v. Kallaos,* 161 F.2d 605 (8th Cir. 1947), the court rejected the same argument.

In this case the plaintiffs raised a technical issue for the first time on appeal. *See Halsell v. Kimberly-Clark Corp.,* 683 F.2d 285 (8th Cir. 1982). It is very clear from the transcript and the pleadings filed in this case that the trial judge and plaintiffs' counsel fully understood that the basis of the motion was that Deputy Evans had probable cause to arrest Doug Rankin. Where, as in this case, the trial judge and opposing counsel fully understand the grounds for a motion for directed verdict, the courts have held that a technically deficient motion is sufficient to form the basis of a post-trial motion for judgment as a matter of law. The court did precisely that in *Lewis v. Nelson,* 277 F.2d 207 (8th Cir. 1960).

In this case the Eleventh Circuit held that the defendants' motion made during trial was sufficient to form the basis of a post-trial motion for judgment as a matter of law. Its decision is in accord with decisions of other federal circuit courts. So long as the trial judge and opposing counsel understand the basis for the motion and

the trial judge is adequately informed of the relevant law, a technical deficiency in the oral motion made at trial should not preclude the trial judge from entering judgment for defendants as a matter of law. *See Clarke v. O'Connor*, 435 F.2d 104 (D.C. Cir. 1970); *Railway Express Agency, Inc. v. Epperson*, 240 F.2d 189 (8th Cir. 1957); *Stewart v. Thigpen*, 730 F.2d 1002 (5th Cir. 1984). This is particularly pertinent in a case like this where the court rules before either side makes an argument. In that respect this case is factually distinguishable from the cases cited by plaintiffs on this issue.

Finally, the defendants clearly raised the probable cause issue in their post-trial motions. The issue was timely asserted in the "reply" that the trial judge treated as addenda to the post-trial motions and memoranda. (R.5-201-1 *et seq.*; R. 5-202-1) The plaintiffs filed a response to that "reply" and never asserted waiver of this issue or technical inadequacy of the defendants' oral motions made during trial. (R.5-203-1 *et seq.*) In *Narey v. Dean*, 32 F.3d 1521 (11th Cir. 1994), the court held that raising a specific issue for the first time in a post-trial motion for a directed verdict does not always preclude raising an issue on appeal. The court noted five exceptions. The second exception discussed in *Narey* is particularly pertinent in this case. That exception is that an appellate court can consider an objection or issue that was not raised at the trial level where the appellant had no opportunity to raise the issue at the trial level. A corollary of that principle should be that a trial judge is not precluded from entering judgment as a matter of law in those same circumstances. In this case, the transcript shows that the defendants had no opportunity to make their argument to the judge during trial. The judge summarily ruled before either side argued. Thus, under the second exception noted in *Narey*, the defendants should have been permitted to raise the issue post-trial.

Moreover, if the evidence is insufficient as a matter of law, but no motion is made under Fed. R. Civ. Pro.

50(a), the trial court can set aside the verdict and order a new trial. 9A Wright and Miller, *Federal Practice and Procedure*, § 2537. In this case even if the defendants' motion for directed verdict was insufficient, the defendants' motion for new trial on the grounds that the verdict was against the manifest weight of the evidence warranted a new trial. As shown below in point II, this case should never have gone to trial. The court should have granted the defendants' motion for summary judgment because there was probable cause for the arrest.

II. WHETHER PETITIONERS' SEVENTH AMENDMENT RIGHTS WERE VIOLATED WHERE THEY HAD NO VIABLE CAUSES OF ACTION TRIABLE BY A JURY AND THE TRIAL JUDGE SHOULD HAVE ENTERED SUMMARY FINAL JUDGMENT AGAINST THEM PRIOR TO TRIAL BECAUSE THERE WAS PROBABLE CAUSE FOR THE ARREST.

The petitioners never raised this argument at the trial level or before the United States Court of Appeals for the Eleventh Circuit. That precludes them from raising this issue for the first time before this Court.

As shown in point I above and in the decision of the Eleventh Circuit, the trial judge and plaintiffs' counsel had actual notice of the grounds for the motion. Thus there could be no Seventh Amendment violation.

This case should never have been tried. Instead, the trial judge should have granted the defendants' motion for summary judgment. The motion for summary judgment very clearly sought judgment in defendants' favor on the grounds that there was probable cause for the arrest. It simply defies logic to say it is a violation of the Seventh Amendment to enter a judgment contrary to that of the jury where the case should never have been submitted to the jury, but should have been decided as a matter of law prior to trial.

CONCLUSION

This Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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